IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4505 OF 2007

Rajendra A. Yadav & Anr .. Petitioners

Versus

Gulab M. Bagwan & Ors. .. Respondents

Mr.N.J.Patil for petitioners

Mr.Dilip Bodke for respondent Nos. 1 to 4

CORAM : S.C.DHARMADHIKARI, J.

DATE : 19th December 2007

P.C.

. The application which was preferred by the petitioner for recalling an order of "No W.S" and permitting them to file written statement is questioned in this petition Under Article 227 of

Constitution of India. It is admitted that Special Civil Suit No.14 of 2006 is pending. Recording of evidence has not yet commenced. Defendants applied for time to file written statement which application was rejected on 5th October 2006. It is further clear that the petitioner filed another application (Exh.31) and applied for condonation of delay. That application was rejected so also the request thereunder to recall the order of No Written Statement.

2. Learned Judge has observed that the ground put forward that the petitioners - defendants were contesting elections is not sufficient and does not come within exceptional circumstances. Yet, the learned Judge observed that no details of the election process of the Municipal Council are stated.

3. The order was passed on 16th March 2007.

There is affidavit in reply filed and along with the same, the records of the suit are also filed. There is rejoinder affidavit in which the election programme and other details are annexed.

4. In my view, considering the peculiar facts of this case and merely because the details pertaining to the elections were not set out, petitioner could not be non suited. This is a suit of 2006. No W.S. order was passed on 19th October 2006. Application to recall the said order was made on 5th February 2007. In such circumstances, learned Judge could have imposed cost and further conditions and granted request therein.

5. Applying the principles laid down by the Supreme Court and this Court so also taking into account that the provisions are directory, in the peculiar facts of this case, petitioners are granted ten days time to file written statement

and the same would be taken on file provided they pay costs to the respondents original plaintiffs in the trial court quantified at Rs.5000/-. Costs condition precedent. Petition disposed of. All concerned to act on an authenticated copy of this order.

(S.C.Dharmadhikari, J)